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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 GLORISMEL JESUS CENTENO,
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Petitioner,

v.

Respondent.

Civil No. 07-0993 BTM (BLM)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

Petitioner, a federal detainee proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

FAILURE TO SATISFY THE FILING FEE REQUIREMENT

Petitioner has failed to pay the \$5.00 filing fee and has failed to move to proceed in forma pauperis. Because this Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or qualified to proceed in forma pauperis, the Court **DISMISSES** the case without prejudice. See Rule 3(a), 28 U.S.C. foll. § 2254.

CLAIMS NOT COGNIZABLE UNDER 28 U.S.C. § 2254

Although Petitioner has filed this action pursuant to 28 U.S.C. § 2254, he is a federal detainee attacking the validity of his federal detention.¹ Therefore, Petitioner may not proceed under section 2254, but may only proceed with a habeas action in federal court under 28 U.S.C.

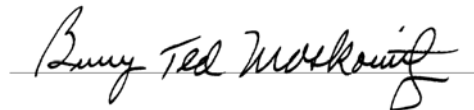
¹ On May 16, 2007, a criminal complaint was filed against Centeno for a violation of 8 U.S.C. § 1326 and he was appointed counsel. (See *United States v. Centeno*, 07mj1055 JMA [doc. No. 2].) The claims raised in the Petition appear to relate to that criminal action.

1 § 2241. *White v. Lambert*, 370 F.3d 1002, 1006-07 (9th Cir. 2004) (holding that section 2254
2 is the proper jurisdictional basis for a habeas petition brought by an individual “in custody
3 pursuant to a state court judgment”). Furthermore, Petitioner has adequate remedies in the
4 pending criminal proceeding which he must exhaust before proceeding by Petition for Writ of
5 Habeas Corpus.

6 Thus, the Petition is **DISMISSED** without prejudice for failure to satisfy the filing fee
7 requirement and because Petitioner’s claims are to be raised in the pending criminal case.

8 **IT IS SO ORDERED.**

9 DATED: June 18, 2007

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11 Hon. Barry Ted Moskowitz
12 United States District Judge
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